

**REMARKS**

**I. Rejections under 35 U.S.C. § 102 should be withdrawn**

The Examiner rejected claims 4-6, 10-12, 14, 59-61, 91, 92, 97-99 and 101-104 under 35 U.S.C. § 102(a) asserting these claims are anticipated by International Patent Application Publication No. WO 99/14240. These claims were also rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0102639 and International Patent Application Publication No. WO 01/46420. In view of the foregoing amendments, the Applicants traverse these rejections.

In the foregoing amendment, claims 99 and 101 are canceled without prejudice. Claims 4-6, 59, 61, 91 and 92 were amended to solely depend from claim 101. Accordingly, dependent claims 10-12, 14, 60, 97 and 98 ultimately depend only from claim 100.

Claims 102 and 104 have been amended to be directed to a polynucleotide comprising the full length nucleotide sequence of the cDNA clone contained in the recited deposits. The full length nucleotide sequences of SEQ ID NOS: 1 and 6 are not disclosed, expressly or inherently, in WO 99/14240, US 2002/0102639 or WO 01/46420. Thus, claims 102 and 104 are not anticipated by the references cited by the Examiner. Claim 103 is directed to a nucleotide sequence encoding a polypeptide comprising the extracellular domain of an amino acid sequence encoded by the cDNA clone contained in the recited deposit. The extracellular domain of SEQ ID NO: 5 spans residues 14 to 350 which is not disclosed, expressly or inherently, in WO 99/14240, US 2002/0102639 or WO 01/46420. Therefore, the sequences taught in the references cited by the examiner do not anticipate claim 103.

In view of the foregoing amendment and remarks, the Applicants respectfully request that the rejection of claims 4-6, 10-12, 14, 59-61, 91, 92, 97, 98 and 102-104 under 35 U.S.C. § 102 be withdrawn.

**II. The rejection under 35 U.S.C. § 112, first paragraph should be withdrawn.**

The Examiner asserted claims 102-104 are not enabled by the specification. In particular, the Examiner stated that the Applicants' referral to the deposit on page 8 of the specification is an insufficient assurance that all conditions set out in 37 C.F.R. §§ 1.801-1.809 have been met. Submitted herewith is a declaration signed by the undersigned attorney

of record, which states that the deposit has been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposits will be irrevocably removed upon grant of a patent on this application, and that the deposits will be replaced if viable samples cannot be dispensed by the depository.

In view of the submission of the attached declaration, all conditions set for in 37 C.F.R. §§ 1.801-1.809 have been satisfied. Accordingly, claims 102-104 are enabled by the specification. The Applicants request that the rejection of claims 102-104 under 35 U.S.C. § 112, first paragraph be withdrawn.

**III. The rejection under 35 U.S.C. § 101 should be withdrawn.**

The Examiner rejected claims 5-11 under 35 U.S.C. § 101, asserting that the claimed invention is directed to non-statutory subject matter because the host cells are not required to be isolated. In the foregoing amendment, claims 5-7 are amended to be directed to "isolated host cells." Claims 8-11 depend from either of claims 5 and 7.

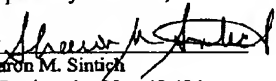
Isolated host cells are not found in nature and thus, do not fail to satisfy the 35 U.S.C. § 101 patentability requirement for that reason. In fact, the subject matter of the claims as amended does fall into a category of patentable subject matter expressly recognized by 35 U.S.C. § 101. Accordingly, claims 5-11 are directed to statutory subject matter and the Applicants request that the rejection under 35 U.S.C. § 101 be withdrawn.

**CONCLUSION**

In view of the above amendment and remarks, the Applicants believe pending claims 4-12, 14, 59-61, 74-75, 91-92 and 97, 98, 100, 102-104 are in condition for allowance.

Dated: November 1, 2004

Respectfully submitted,

By   
Sharon M. Sintich

Registration No.: 48,484  
MARSHALL, GERSTEIN & BORUN LLP  
233 S. Wacker Drive, Suite 6300  
Sears Tower  
Chicago, Illinois 60606-6357  
(312) 474-6300  
Attorney for Applicants